

**THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

MICHAEL ANTHONY DAVIS,)	
)	
Plaintiff,)	
vs.)	NO. CIV-12-0253-HE
)	
TERESA DONHAM, ET AL.,)	
)	
Defendants.)	

ORDER

Plaintiff Michael Davis, a federal prisoner appearing *pro se*, has brought this action claiming violations of his constitutional rights. Before the court is plaintiff's motion to proceed *in forma pauperis*. Consistent with 28 U.S.C. § 636(b)(1)(B), this case was referred to Magistrate Judge Bana Roberts for initial proceedings. Judge Roberts has recommended the motion be denied on the basis that plaintiff is barred from proceeding *in forma pauperis* by the three-strikes rule found in 28 U.S.C. § 1915(g). She further recommended the court dismiss the complaint if plaintiff fails to prepay the full \$350 filing fee within twenty days. Plaintiff has filed a timely objection; therefore, the court makes a de novo review of the issues to which plaintiff objects. *See* 28 U.S.C. § 636(b)(1). The court concludes plaintiff's motion should be denied.

Mr. Davis argues the magistrate judge exceeded her authority in the report and recommendation by effectively dismissing his claim. He further contends that his claims are not "fanciful" such that a dismissal on the basis of frivolousness is warranted. Plaintiff has misread the report and recommendation.

Plaintiff is correct that a magistrate judge only has the authority to make

recommendations to the court on dispositive matters in civil cases absent consent from the parties. *See* 28 U.S.C. § 636(b)(1)(B), 636(c). Litigants have the right to object to any such recommendation within fourteen days. *See* § 636(b)(1). The court then conducts a de novo review of the portions of the recommendation to which objection is made. *Id.* Here, the magistrate judge did not recommend that plaintiff's claims be dismissed as frivolous. Instead, she recommended plaintiff's motion to proceed *in forma pauperis* be denied because he has accumulated three strikes under 28 U.S.C. § 1915(g) and has not alleged that he is in imminent danger of serious physical injury.


Mr. Davis has not lodged any specific objection to the magistrate judge's conclusion that he has accumulated three strikes, nor does he contend he is in imminent danger of serious physical harm. Consequently, under the firm-waiver rule, plaintiff has waived his right to object to those portions of the report and recommendation. United States v. 2121 E. 30th St., 73 F.3d 1057, 1059 (10th Cir. 1996); *see also* 28 U.S.C. § 636(b)(1)(C) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations *to which objection is made.*" (emphasis added)). Even if he had challenged those conclusions, the court recently determined in Case No. CIV-12-0149-HE that Mr. Davis has "struck out" of proceeding *in forma pauperis* under the Prison Litigation Reform Act, and he has made no "specific, credible allegations of imminent danger of serious physical harm." *See Hafed v. Fed. Bureau of Prisons*, 635 F.3d 1172, 1179-80 (10th Cir. 2011).

The Report and Recommendation [Doc. #6] is therefore **ADOPTED** and plaintiff's

motion to proceed *in forma pauperis* [Doc. #2] is **DENIED**. Plaintiff is directed to prepay the full \$350 filing fee **on or before April 27, 2012**, or his case will be dismissed.

IT IS SO ORDERED.

Dated this 10th day of April, 2012.



JOE HEATON
UNITED STATES DISTRICT JUDGE